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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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4 In the Matter of the Petition of )

)

5 PUGET SOUND ENERGY, INC,

) Docket No. UE-121594

) Volume I

6 for a Determination of Emissions )

) Pages 1 to 15

Compliance )

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ADJUDICATIVE PROCEEDING, VOLUME I

10

Pages 1 - 15

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ADMINISTRATIVE LAW JUDGE DENNIS MOSS

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9:30 A.M.

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OCTOBER 12, 2012

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Washington Utilities and Transportation Commission

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1                                   A P P E A R A N C E S   (Continued)

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OLYMPIA, WASHINGTON; OCTOBER 12, 2012

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9:32 A.M.

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P R O C E E D I N G S

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JUDGE MOSS: Good morning. I'm Dennis Moss. I'm

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an Administrative Law Judge with the Washington Utilities

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and Transportation Commission, and we are convened this

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morning in the matter of the Petition of Puget Sound

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Energy, Inc. for a Determination of Emissions Compliance.

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Our Docket Number is UE-121594.

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We'll start taking appearances. I think we're

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going to have four of those, unless I'm mistaken.

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We'll start with the Company.

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MR. KUZMA: Jason Kuzma on behalf of Puget Sound

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Energy.

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JUDGE MOSS: And we will just take the short

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form, say just your name and who you represent.

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MR. WOOD: Tom Wood, Tenaska Washington Partners,

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LP.

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JUDGE MOSS: I'm handing the court reporter a

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appearance list there so she can use that later.

24

Okay, Ms. Hirsh.

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MS. HIRSH: Nancy Hirsh representing the

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1 Northwest Energy Coalition.

2 JUDGE MOSS: Mr. Trotter.

3 MR. TROTTER: Don T. Trotter representing UTC  
4 Staff.

5 JUDGE MOSS: All right, is there anyone else who  
6 wishes to enter an appearance today, any representative of  
7 a party or a potential party?

8 Apparently not.

9 All right, having dispensed with that, let's move  
10 quickly to the petitions to intervene. We had a petition  
11 filed by the Tenaska Washington Partners LP and also a  
12 petition filed by the NWECC. I appreciate you filing those  
13 petitions in advance as requested.

14 I will just ask if there's any objections?

15 MR. KUZMA: No, Your Honor.

16 JUDGE MOSS: No objection, Mr. Trotter, I assume?

17 MR. TROTTER: No.

18 JUDGE MOSS: All right, fine. Well, then we'll  
19 grant those petitions to intervene. I think they certainly  
20 do demonstrate a substantial interest in the proceeding and  
21 that their participation will be in the public interest.

22 All right, now I had a brief off the record  
23 discussion this morning with Mr. Kuzma and Mr. Trotter and  
24 learned that they had more or less agreed to a process, or  
25 a proposal I should say since it didn't include all the

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1 parties in the discussion, which turned out to be entirely  
2 consistent with what I had in mind for today.

3           So I think I will make a record on this since I  
4 spent all this time preparing my remarks and whatnot, but I  
5 think it would be useful to have a record too in that I  
6 think this may be the first time we've had one of these  
7 cases on a stand-alone basis. I know we did Net Farm in  
8 the context of a general rate case and some others.  
9 Lancaster was in Avista. I don't know if that was a  
10 stand-alone or not. But several of these in the past, so.

11           Any event, I will note for the record then that  
12 PSE filed on October 3rd, 2012, for a determination under  
13 RCW 80.80 -- I'm sorry, I should be more clear --  
14 80.80.060(5) and WAC 480-100-415 asking for an order that  
15 the Tenaska Ferndale Cogeneration Station complies with the  
16 Greenhouse Gas Emissions standards that are set forth in  
17 RCW 80.80.040.

18           Now we have a procedure under WAC 480-100-415(2)  
19 that requires the Commission to consider a petition such as  
20 this under Part 4 of the Administrative Procedure Act and  
21 the applicable Commission rules governing adjudicatory  
22 proceedings, and so we're guided by that.

23           We issued a Notice of Hearing on October 4th  
24 consistent with the requirements of RCW 34.05.434 and WAC  
25 480-07-440. We related in that notice that the company had

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1 requested what I consider to be a rather highly expedited  
2 process. They want an order by November 2nd, which is a  
3 request driven by the business needs of the parties, which  
4 is a consideration that we are expressly required to take  
5 into account when setting a schedule for a proceeding such  
6 as this under our WAC.

7 We also noted in the notice or said in the notice  
8 that we are also required, of course, to take into account  
9 the procedural rights of others when setting that schedule.  
10 And taking those requirements into account, we decided to  
11 do something a little unusual, and we noticed it as a brief  
12 adjudicative proceeding.

13 We also indicated, however, that in the event it  
14 turned out that the matter was contested and that the  
15 procedural rights of the parties were of such nature as to  
16 require it, we would convert the proceeding, as we are  
17 authorized to do under RCW 34.05.070 and WAC 480-07-940.

18 Staff on October 9th filed a motion to dismiss  
19 arguing that the BAP process as defined in RCW  
20 34.05.482(1)(c) trumps the implication in WAC 480-07-610(2)  
21 that the Commission may use the BAP process in proceedings  
22 in addition to those enumerated in that rule. I'm inclined  
23 to think that Mr. Trotter, who signed that motion on behalf  
24 of Staff, is probably technically correct, legally correct.

25 Nevertheless, we had in mind that we would

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1 instead of dismissing, offer the alternative relief as  
2 suggested in our notice and convert this proceeding. And  
3 so that is the first real action I'm taking today. We're  
4 going to convert this proceeding into one governed by the  
5 general requirements for adjudicatory proceedings under RCW  
6 34.05.413 through 34.05.476. And, of course, as I noted,  
7 that conversion is authorized by other statute and rule.

8           So with that procedural bridge behind us, I'll  
9 say -- well, let me first talk about the NWECC, and then  
10 we'll talk about the more substantive things that we're  
11 going to do here today.

12           NWECC filed a response to PSE's petition, and as I  
13 understand the response, and Ms. Hirsh will correct me if I  
14 am wrong, NWECC does not challenge that the Ferndale plant  
15 meets the current legal statutes of greenhouse gas  
16 emissions standard of 1100 pounds per megawatt hour, but  
17 asks the Commission in any order determining the plant to  
18 be compliant to be clear that this is vis-a-vis the  
19 currently effective standard, which may change in the  
20 future.

21           And in this connection, I just wanted to assure  
22 the NWECC that the Commission will consider this matter only  
23 in the context of the currently effective law, and we'll of  
24 course make no prejudgments about any future compliance  
25 determination that might have to be made under different



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1 circumstances and a different standard. So with that  
2 assurance, perhaps that satisfies the NWECC's principal  
3 concern.

4 Now Staff also filed yesterday what I thought was  
5 a very useful filing identifying the issues that are its  
6 concerns, and a very lucid statement of that. And Staff  
7 indicated it had sent informal data requests. And again,  
8 had a brief conversation this morning, I understand -- is  
9 the represent from the Department of Ecology here today?

10 MR. TROTTER: Yes, Your Honor, he's here.

11 JUDGE MOSS: Okay. And that's Mr. Newman, is it?

12 MR. NEWMAN: Yes.

13 JUDGE MOSS: Mr. Newman, welcome, appreciate you  
14 being here.

15 So basically we have here the players, if you  
16 will, who are -- and PSE also has several of its own people  
17 here who can speak to this matter.

18 And I'm getting Mr. Kuzma's nodding in the  
19 affirmative, so.

20 And Mr. Bruning is on the phone.

21 MR. KUZMA: Correct.

22 JUDGE MOSS: He's another PSE person.

23 So we have people present who can usefully  
24 participate in a technical conference that may yield much,  
25 if not all, of the information in which Staff has expressed

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1 an interest.

2           Mr. Nightingale I see is here from the Staff, and  
3 I know he has previously testified on this subject matter  
4 in other contexts. Net Farm in particular sticks in my  
5 mind.

6           And so we have, again, everyone present I think  
7 who needs to be. And the parties have proposed to me that  
8 we have a technical conference. Now ordinarily I would not  
9 be involved in a technical conference, and you guys would  
10 just go your own way. I will just ask you, if you want me  
11 to be involved in the technical conference, I think I can  
12 without violating any ex parte rule since we're all here.  
13 Or if you don't feel like you need me, I can retire to my  
14 office and drink my coffee.

15           MR. TROTTER: Well, Your Honor, I just  
16 anticipated it would be the parties. I'm sure we would  
17 love to have you, but I just anticipated it would just be  
18 the parties.

19           JUDGE MOSS: Okay, that's very diplomatically  
20 said. All right, I will then -- we'll recess.

21           And since this is an indefinite duration I think,  
22 and I want to give you as much time as you need, I won't  
23 check in with you for at least, what, an hour or so. If  
24 you check in with me before that, that's fine. Mr. Trotter  
25 knows where to find me. I'll be in my office. I look

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1 forward to hearing at least a brief report of the success  
2 of your ventures at that time.

3 We'll be in recess.

4 (Recess taken from 9:42 a.m until 10:32 a.m.)

5 JUDGE MOSS: Mr. Trotter has come down and  
6 fetched me and tells me that you all have completed your  
7 conversations this morning. Who's going to give me a  
8 report? You gave me a brief one, but.

9 MR. TROTTER: I would be happy to, Your Honor.

10 Our technical conference was very productive.  
11 Staff and the Company have agreed to let the Company  
12 provide some additional information, and I think very  
13 promptly, today even?

14 MR. KUZMA: I believe that could be done today.

15 Do you think --

16 Okay, yes.

17 MR. TROTTER: And if that information comes  
18 through as we expect, Staff will be able to support the  
19 petition. And then the question is what kind of procedure  
20 is necessary to accomplish to get an order out.

21 JUDGE MOSS: I wonder if it would be possible for  
22 the parties to enter into, not anything elaborate, but just  
23 perhaps a stipulation of facts that if indeed Staff becomes  
24 satisfied that the plant is compliant, to that effect.  
25 Something, as I said, brief.

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1           MR. TROTTER: Yes. I should have added that I  
2 think the Department of Ecology has assisted our goal here,  
3 has been very helpful I would say today, but I understand  
4 from Mr. Newman that he's prepared to draft or produce a  
5 letter that indicates compliance.

6           JUDGE MOSS: Okay.

7           MR. TROTTER: So we could do that.

8           JUDGE MOSS: Well, Mr. Newman, we certainly  
9 appreciate your participation. Mr. Trotter did say to me  
10 as we walked down the hall how very helpful you were to  
11 this process today, and thank you so much for coming over  
12 and helping us out in this action. And of course a letter  
13 like that would be a very helpful part of our record, so  
14 thank you.

15           MR. TROTTER: We'll be prepared to do that on  
16 short order after we get the --

17           JUDGE MOSS: Okay.

18           MR. TROTTER: Expected back.

19           JUDGE MOSS: Why don't you proceed with your  
20 exchange of information and prepare the document. We'll  
21 await the letter from Mr. Newman from Ecology. And once I  
22 have all these materials, it should be a simple enough  
23 matter to produce an order quickly.

24           Let me ask you, Mr. Kuzma, what timing we're  
25 looking at in terms of the definitive agreement that PSE

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1 anticipates entering into with Tenaska Washington Partners?

2 MR. KUZMA: PSE actually entered into the  
3 agreement on October 3rd. It was shortly after we actually  
4 submitted the application of the case. There are some  
5 conditions precedent to closing, this being one of them.  
6 Another being approval of the Section 203 filing at FERC,  
7 and there may be some other items.

8 JUDGE MOSS: Sure.

9 MR. KUZMA: So, you know, as the petition stated,  
10 both parties were looking at a mid November closing, hoping  
11 to have all those applications approved by then.

12 JUDGE MOSS: Sure. Well, I think it would be  
13 useful to have that agreement as part of the record as  
14 well, and I understand there may be confidential aspects to  
15 it, but we have a protective order in place that would  
16 accommodate that if it's needed, so let's do that.

17 MR. KUZMA: Yes, Your Honor. We would have done  
18 it in the first place, but it was still being finalized at  
19 the time.

20 JUDGE MOSS: Sure, I understand. And let's hope  
21 FERC can proceed expeditiously. I used to practice before  
22 the FERC, and sometimes I would return after ten years and  
23 find things still pending that I had worked on.

24 All right, anything else?

25 All right, thank you all very much. I appreciate

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1 the way in which you've handled this with such cooperative  
2 spirit and dispatch.

3 MR. KUZMA: Thank you, Your Honor.

4 JUDGE MOSS: We'll be off the record.

5 (The proceedings were concluded at 10:36 a.m.)

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C E R T I F I C A T I O N

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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6 I, Joan E. Kinn, a Certified Shorthand Reporter

7 and Notary Public in and for the State of Washington, do

8 hereby certify that the foregoing transcript of the

9 adjudicative proceeding on October 12, 2012, is true and

10 accurate to the best of my knowledge, skill, and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand

12 and seal this 22ND day of OCTOBER, 2012.

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JOAN E. KINN, RPR, CCR

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18 My commission expires:

19 JANUARY 2016

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